

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

JOE HERNANDEZ	§	
VS.	§	CIVIL ACTION NO. 1:19cv331
DARRINGTON PRISON, ET AL.	§	

MEMORANDUM OPINION REGARDING VENUE

Plaintiff Joe Hernandez, an inmate at the Wynne Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983 against the Darrington Prison and Darrington Prison Employees.

The above-styled action was referred to the undersigned magistrate judge pursuant to 28 U.S.C. § 636 and the Local Rules for the Assignment of Duties to the United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Discussion

Plaintiff complains of the conditions of his confinement at the Darrington Unit.

Analysis

The Civil Rights Act, 42 U.S.C. §1981, *et seq.*, under which this case is brought, does not contain a specific venue provision. Accordingly, venue in civil rights cases is controlled by 28 U.S.C. § 1391. *Jones v. Bailey*, 58 F.R.D. 453 (N.D. Ga. 1972), *aff'd per curiam*, 480 F.2d 805 (5th Cir. 1973).

Plaintiff does not assert jurisdiction is based on diversity of citizenship. When jurisdiction is not founded solely on diversity of citizenship, 28 U.S.C. § 1391 provides that venue is proper only in the judicial district where the defendants reside or in which the claim arose. Plaintiff is currently

confined at the Wynne Unit located in Huntsville, Texas. However, his claims arose at the Darrington Unit located in Rosharon, Brazoria County, Texas. Additionally, the prison defendants are located in Rosharon, Texas. When public officials are parties to an action in their official capacities, they reside for venue purposes in the county where they perform their official duties, which in this case is Brazoria County. *Holloway v. Gunnell*, 685 F.2d 150 (5th Cir. 1982); *Lowrey v. Estelle*, 433 F.2d 265 (5th Cir. 1976). In accordance with 28 U.S.C. § 124, Brazoria County, Texas is located within the jurisdictional boundaries of the United States District Court for the Southern District of Texas, Galveston Division. Accordingly, plaintiff has failed to establish a jurisdictional basis for his claims to proceed in the Eastern District of Texas.

As Rosharon, Texas is located within the jurisdictional boundaries of the United States District Court for the Southern District of Texas, venue in the Eastern District of Texas is not proper. When venue is not proper, the court “shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” 28 U.S.C. § 1406(a). This case should be transferred to the United States District Court for the Southern District of Texas, Galveston Division. An appropriate order so providing will be entered by the undersigned.

SIGNED this 30th day of September, 2019.



Zack Hawthorn
United States Magistrate Judge